

Claims 1-22 were rejected under 35 U.S.C. 103 over Burdette in view of Franck. The Examiner's opinion continues to be that Burdette discloses every inventive element in the rejected claims except for the use of a body-fixed coordinate system, a reference point detecting means and a referencing means but that Franck discloses these inventive points missed by Burdette. These references have already been discussed in Amendment "A" submitted earlier, and applicant continues to argue that there is no suggestion to combine the teaching of these two references, and that Franck and Burdette relate to different kinds of medical treatment and hence that one of skill of the art would not be motivated to combine the teachings of these two references. In addition, any combination of Franck and Burdette will not result in the present invention.

In Paragraph 4 of the Official Letter, the Examiner acknowledged "the difference in the procedures required for performing procedures on different body part", but the Examiner also stated immediately thereafter "the fact that a tumor is a tumor, regardless of the location of (sic, in(?)) the body." It is not entirely clear what the Examiner means by this statement, but if the intended meaning is one or more of the following; that one tumor's pathology is the same as any other tumor's pathology; that one tumor's treatment is the same as any other tumor's treatment; that one tumor's morphology is the same as any other tumor's morphology, applicant disagrees and submits that there is no evidence of record for any of the foregoing statements. Accordingly, in the event the Examiner maintains any of the foregoing, applicant respectfully requests, under 37 C.F.R. 1.104(d)(2), that the Examiner submit an affidavit as to such facts. In the event that the statement that "a tumor is a tumor" had a different intended meaning, the Examiner is requested to point out support for the assertion in the prior art or likewise provide an affidavit. Applicant submits that the method of a tumor's treatment and removal will be radically different, depending on its location in the patient's body, and the characteristics of a particular tumor. Regarding the Examiner's statement that a tumor is a tumor, therefore, applicant requests the Examiner to consider the following question. Would a person having a pain in the chest go to a dentist because a pain is a pain? Applicant believes that the statement cited above is overly simplistic and is not pertinent in the present context.

The Examiner further states that the pathologies of abnormal growths remain the same and that the stereotactic implantation of brachytherapy seeds at a location surrounding the prostate and at a location in the brain are performed utilizing essentially the same procedure. Applicant respectfully disagrees, and requests that the Examiner point out where such evidence is of record, or provide an affidavit as to the same under 37 C.F.R.

1.104(d)(2). Applicant submits that substantially different procedures are used for the tumor removal as a whole.

As already discussed in said Amendment "A", a stereotactic surgical procedure can be performed on different parts of a body, and it goes without saying that the human body includes many parts which are so different in character that different procedures must be employed by doctors trained in different branches of medical science. In view of the great number of differently characterized body parts and the great number of treatment techniques, applicant argues that it is not appropriate to combine references relating to different body parts and different treatment techniques.

Applicant submits that the Examiner has improperly combined the references based upon the hindsight gained by the present invention. Burdette relates to a virtual reality heads up type display that creates a translucent view of the patient's body to allow the surgeon to "view" the prostate during surgery on the virtual reality display. Frank relates to tracking an instrument during stereotactic image guided brain surgery. While the Examiner has made unsupported statement that one would be motivated to combine the two, nothing in Frank suggests, either explicitly or implicitly, that it might be useful with a real time brachytherapy system of Burdette. Similarly, nothing in Burdette suggests that the visualization system described therein should be combined with a stereotactic image guided brain surgery system.

Moreover, it is not clear that any combination of Burdette and Frank would result in the present invention. In Burdette the frame that is fitted to the head is fixed with respect to the template placed on the patient's head. From there, the instrument is tracked with respect to the bone anchors. Nothing in Franck tracks the position of any seeds. Thus, the combination of Burdette and Franck would require further modification to result in the present invention.

In summary, applicant believes that the application is allowable, and such action by the Examiner is earnestly solicited.

Respectfully submitted,



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